



भारत का राजपत्र

The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप खण्ड (iii)

PART II—Section 3—Sub-section (iii)

प्राधिकार से प्रकाशित

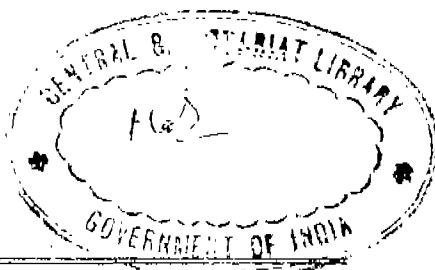
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सं. 18]

नई दिल्ली, ब्रह्मस्पतिवार, अप्रैल 27, 2000/वैशाख 7, 1922

No. 18]

NEW DELHI, THURSDAY, APRIL 27, 2000/VAISAKHA 7, 1922



भारत निर्वाचन आयोग

अधिसूचना

नई दिल्ली, 26 अप्रैल, 2000

आ.अ. 34(अ).—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में निर्वाचन आयोग वर्ष 1999 की निर्वाचन अर्जी संख्या 42 में मध्य प्रदेश उच्च न्यायालय, जबलपुर के तारीख 16 मार्च, 2000 के आदेश को एतद्वारा प्रकाशित करता है।

[आदेश अंग्रेजी की अधिसूचना में देखें]

[सं. 82/प.प्र.—लो.स./(42/99)/2000]

आदेश से,

एल. एच. फारकी, सचिव

ELECTION COMMISSION OF INDIA

NOTIFICATION

New Delhi, the 26th April, 2000

O.N. 34 (E).—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes the order of the High Court of Madhya Pradesh, Jabalpur dated 16th March, 2000 in Election Petition No. 42 of 1999.

HIGH COURT OF MADHYA PRADESH, JABALPUR**ELECTION PETITION NO. 42/99**

PETITIONER : Charan Lal Sahu S/o Moti Lal Sahu, Advocate Supreme Court 96, Lawyers Chamber Supreme Court Building Compound New Delhi.

Versus

RESPONDENTS :	1. Shri Tarachand Sahu, B.J.P. Candidate R/o Village Kachhna Durg Distt. Durg M.P.	—Returned Candidate
	2. Shri Pradeep Chobey R/o Kelawadi, Durg Madhya Pradesh	—Congress Candidate
	3. Bhojram Dadsehra R/o Ram Nagar, Muktidham Bhilai, P.O. Supela Distt. Durg, M.P.	—B.S.P. Candidate
	4. Umed Das Banjare, Village Parsada; P.O. Nagadha, Tahsil Nawagarh Distt. Durg, M.P.	—Ajay Bharat Party
	5. Devkumar Netam Vill. & P.O. Borai P.S. Pulgaon, Tahsil. and Distt. Durg M.P.	—Gondwana Gantantra Party
	6. Lokesh Kumar Mishra R/o 5F/36/7 Bhilai Nagar Distt. Durg M.P.	—Rashtriya Majdoor Ekta Party
	7. Achhche Singh Krantikari Netaji Subhash Nagar, Near Kali Mandir, Nandani Road Bhilai Distt. Durg M.P.	—Independent
	8. Bhousaheb M.B. Belekar Gulshan Bhavan Kurud Road, Kohaka, Bhilai Distt. Durg M.P.	—Independent
	9. Bhagwatrao Dongre, R/o H.No. 802 Near Buddh Vihar Ward No. 10 Shankar Nagar Durg. M.P.	—Independent
	10. Rajesh Dubey R/o Mohbhatta Road Bhatapara, Bemetara, Distt. Durg M.P.	—Independent
	11. Smt. Laxmi, C/o Returning Officer and Collector, Durg M.P.	—Withdrawn after Candidate Scrutiny.

आवेदक

विरोधी पक्षकार

Election petition under Section 81 of Representation of People Act, 1951, for challenging the Validity correctness and propriety of the elections of 21 Durg Parliamentary Constituency के लिए आवेदन पत्र।

याचिका आवेदक के घकील श्री A. B. Khan द्वारा दिनांक 18-11-99 को प्रस्तुत की गई।

आवेदन पत्र दिनांक 16-3-2000 को माननीय न्यायमूर्ति श्री R. S. Garg और माननीय न्यायमूर्ति श्री.....
के समक्ष आवेदक के घकील श्री Charan Lal Sahu और विरोधी पक्षकार के घकील श्री.....
की उपस्थिति में अनिम सुनवाई के लिए प्रस्तुत किया जाना था। न्यायालय द्वारा निम्नलिखित आदेश पारित किया गया :—

आदेश

(Order dated 16-3-2000 attached herewith)

उच्च न्यायालय मध्य प्रदेश, जबलपुर

मामला क्रमांकElect.....42/99

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक
तथा आदेश क्रमांक

हस्ताक्षर सहित आदेश

कार्यालयीन मामलों में छिन्टी रजिस्ट्रार के
अन्तिम आदेश

16-3-2000

Petitioner is present in
person.

Arguments heard.
Orders dictated in open
Court and signed.

Sd/-

R.S. GARG

Judge

IN THE HIGH COURT OF MADHYA PRADESH

JABALPUR

ELECTION PETITION NO. 42/99

Charan Lal Sahu

Vs.

Shri Tarachand Sahu & others.

ORAL ORDER

16/3/2000

The present is an Election Petition under Section 81 of Representation of People Act, 1951.

2. Petition Charan Lal Sahu who according to cause-title of the petition is an advocate practising in the Supreme Court has filed this Election Petition challenging the validity, correctness, and propriety of the elections of 21 Durg Parliamentary Constituency.

3. Subsequent to paragraph 10 of the Election Petition, the petitioner has raised and formulated the grounds on which he is impugning the fairness and correctness of the elections.

4. Ground-A says that the election of the Constituency was not free and fair, therefore the same be declared as null and void, in view of submissions made in the petition and materials placed with the same. After going through the entire election petition and the pleadings raised by the present petitioner, I am unable to find even a whisper which says that how the elections are not free and fair. Ground-A does not provide any ground in support of the petition.

5. Ground-B says that the election of the Returned Candidate is void and illegal as he was not qualified to be elected third time as Member of Parliament in view of Article 57 and 79 of the Constitution of India.

6. For better appreciation of arguments, it is necessary to refer the article 57.

7. Article 57 provides that a person who hold, or who has held, office as President shall, subject to the other provisions of the constitution, be eligible for re-elections to that office. In the opinion of this court Article 57 has nothing to do with the election in dispute as the election was not for the office of the President but was an election for the office of Member of Parliament. Section 79 provides that there shall be a parliament for the Union which shall consist of the President and two houses to be known respectively as the Council of the States and the House of the People. Even if Article 57 and Article 79 are read in juxtaposition, it would not provide a ground to set aside the elections. In the opinion of this Court Ground-B does not stand nor can be pressed into service for setting aside the elections of the constituency.

8. Ground-C raised in support of the election petition says that the nominations of respondent no. 1 to 6 were violative of Article 14 and 38 of the Constitution of India and section 29 (5) of the R.P. Act and Rules 22 (i) (c) of Registration of Electoral Rules 1960 read with the Election Symbols (Reservation of allotment) Order 1968 issued under Article 324 of the Constitution of India. According to the petitioner as the Political Parties are permitted to be registered with the Election Commission they are being extended certain benefits and a private individual who wish to contest the election as a private party has not been given such benefits. Submission of the petitioner is that the candidate projected and proposed by a political party is required to submit one proposer and one secondar while a private candidate is required to bring 10 proposers and 10 secondars. In the opinion of this Court, the law as it stands will have to be followed not only by the Election Commission but even by the parties who propose to contest the elections. The petitioner has not properly appreciated that a political party can always be registered under the provisions of law and if the law mandates that a private party or a private individual should bring 10 proposers and 10 secondars then the election would be governed by such legal provisions. In any case, this question cannot be raised in an election petition because that is a not ground falling under section 100 or Section 123 of the Representation of People Act. It is within the domain of Parliament to make such a law. If the petitioner feels that the law made by the parliament is ultra vires the Constitution then he certainly would be free to raise his grievances either before the High Court under Article 226 of the Constitution of India or before the Supreme Court under Article 32 of the Constitution of India. The petitioner in any case had submitted his nomination proposed by 10 proposers and seconded by 10 secondars, therefore at this stage he cannot be allowed to say that he was not given a proper opportunity to contest the elections. One could understand that because a person could not find 10 proposers or 10 secondars and therefore was denied the opportunity to contest the elections but in the present case the petitioner has not suffered such a set back. The submission of the petitioner that the candidates of political parties on the ground of parity were required to submit nominations proposed by the 10 proposers and seconded by 10 secondars also cannot be allowed because the law does not require such candidates to submit such a form.

9. The submission of the petitioner further is that the party candidates are getting free electoral rolls but the private candidate does not get the free electoral roll, therefore those provisions are violative of the equality clause and the election was adversely affected. In the opinion of this Court when the law says that particular benefits would be extended to a party candidate and not to the private candidate then it would not be proper for this Court to enter into a controversy like that and say that because the rules are bad the election is hit. In any case in the entire petition, the petitioner has nowhere stated as to how because of the non-supply of the electoral roll his elections were adversely affected. In any case, the petitioner could have obtained copies of the electoral roll by making payment to the concerned officer.

10. Referring to preamble of the Constitution of India and Article 38 of the Constitution, the petitioner submits that the petitioner is seeking political justice and therefore this Court should entertain the petition and set aside the elections. Article 38 of the Constitution of India provides that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. I am unable to understand that what political justice was denied to the petitioner. The petitioner simply says that he was required to bring 10 proposers and 10 secondars and he was not supplied the copies of the electoral rolls free of cost. I do not consider that this ground would provide any foundation in favour of the petitioner to question the validity of the elections. A reference of Article 19 would be the perfect answer to the argument of the petitioner.

11. It was then submitted by the petitioner that Section 29(A)(5) of the Representation of People Act, 1951 is ultra vires the Constitution as it denies the equality to the petitioner in comparison to the political parties.

12. Section 29(A) has been inserted in the Act, by Act No. 1 of 1989 with effect from 15-6-89. It says that an application under sub-section 1 shall be accompanied by a copy of the memorandum or rules and regulations of the association or body, by whatever name called, and such memorandum or rules and regulations shall contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy, and would uphold the sovereignty, unity and

integrity of India. Sub-section 5 of Section 29 (A) does not depart itself from the provision of the Representation of the People Act, 1951. It simply requires an association or body of individual citizens of India calling itself a political party to contain a specific provision in their rules etc. that they would bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy and would uphold the sovereignty, unity and integrity of India. I fail to understand as to how Sub-section 5 would be bad if the government wants or the law requires from an association or body of individuals that they would make such a provision in their rules, memorandum/ bye-laws.

13. Submission of the petitioner is that political parties can make an application for registration but as the petitioner is not permitted to be registered under section 29 (A) the election was adversely affected. The argument is misconceived. Section 29 (A) applies to an association or body of individual who are citizens of India and are calling themselves a political party and are inclined to avail themselves the benefit of the provisions of part IV-A of the Act. An individual even under the law cannot be treated as an association or body of individuals. An individual who is not a member of association or a member of body of individuals certainly cannot be registered either as an association or body of individuals. In the opinion of this Court, this ground in any case would not affect the election.

14. It was next contended that the Election Commission has to exercise its superintendence over the election matters and the elections and, as in the present case and the elections of the Parliament the elections were not properly supervised the elections deserve to be set aside. It is further contended that the elections are not free and fair, therefore also the elections deserve to be set aside. While considering the ground-A, I have already found that the petition is absolutely silent and it does not say or raise any pleading as to how the elections are not free and fair. The petition is beautifully vague and conspicuously silent in all such material particulars which are required to be pleaded under the law. Not even a single instance has been given in the petition relating to the election in dispute as to how the Election Commission could not supervise the elections properly and how it failed in exercising its jurisdiction under Article 324 of the Constitution of India.

15. It was further contended that Election Commission had no right to issue an order under Section 77 and 29(A) (5) of the Representation of the People Act. Section 29(A) (5) I have just dealt with. Section 77 refers to account of the election expenses and maximum thereof. The plight of the petitioner is that on one hand the political parties are obtaining, securing or illegally extorting the donations, therefore, they are in a position to run their election campaigns, while on the other hand people like petitioner are not in a position to contest the elections against such political parties. In the opinion of this Court, unless there are some pleadings in the election petition that how and in what manner the money was obtained by the political party or somebody extorted money in name of the donations, it would not be possible for this Court to record a finding. In the entire petition which runs in as many as 13 pages, the petitioner fails to raise one single plea that how the election was adversely affected because of the financial assistance given to the political parties by the private individuals. The petitioner submits that this Court must take judicial notice of the facts and the present political condition of the country and must record a finding that the political parties to achieve their political objects are taking donations or are extorting money in name of donations. An election petition filed under section 81 has to confine itself to the grounds which are available to a petitioner within the Act itself. If the ground says that the elections were adversely affected because of the donations or extortion of money, then only the High Court trying the election petition would have jurisdiction to enter into the said issue, simply because an election petitioner raises a loud voice and projects a loud ground the same would not provide a foundation in support of the election petition.

16. Referring to page 7 Para 5 of the election petition, the petitioner has contended that as he has given the details of the corrupt practices the election deserves to be set aside. A perusal of paragraph 5 would simply show that the petitioner has not given proper details or the facts nor has given the particulars of his allegations. Paragraph-5 simply says that when the Prime Minister of India, Shri Atal Bihari Vajpeyi came to Bhilai a sum of Rs. 50 lacs was spent and similarly the Chief Minister of M. P. Shri Digvijay Singh and other Ministers also used State Machinery. Neither the particulars are given nor the details. Even otherwise this would not provide a ground for setting aside the elections.

17. The petitioner referred to paragraph-10 of the Election Petition which reads as under :

"That the political parties registered under section 29A of the Act is undemocratic and these parties are not enjoying the majority of 51% and still with a ulterior motive to catch hold of the Govt. adopt corrupt practices and people at large are being deceived of their hidden agenda it is apparent that there were various corruption charges against the Chief Minister, namely Pratap Singh Kairon of Punjab, Chief Minister Arjun Singh, Chief Minister Saklecha, Chief Minister Lalu Yadav, Prime Minister P.V. Narasimha Rao etc. are the direct result of the political party who corruptly misused the State Machinery for gaining power and spending money above the excess ceiling limit as stated above by the Hon'ble Supreme Court. These political party with a deep conspiracy against the democratic system of

India and social justice to the poorer persons of the society, who are below 75% of the population of India are setting their own relations and their 'yes' man as a candidated and collecting huge amount from Industrialist, from businessman and public for inducement and fullment of their own desires or for giving them posts in the Govt. Thus the elections in India are a game of one per cent rich persons and 99% people are not getting the benefit of the democracy and constitutional provisions. Due to it in 1996, there was a violence in election of 1209, and in 1998 election it increased to 1541 with a death toll of 313 and 251 respectively this clearly shows that the parties are using more and more muscle power hence deceiving the independent and poor candidates for their ulterior motive to get power. Therefore the registration of the political party under section 29(5) of the R.P. Act and the Election Symbol Order, 1968 are violative to Articles 14, 68, 84 and 324. Thus it amounts to undue influence and corrupt practice under section 123 of the R.P. Act. Due to the above offences committed by the workers of the political parties the elections in the Lok Sabha was 359 crores in 1996, 666 crores in 1998 and 855 crores in 1999 as per paper report. Thus the poor persons of the country are sufferers and it is a social, political injustice for which the Govt. of the day and Election Commission is responsible."

18. I repeatedly asked the petitioner as to how paragraph 10 of the petition is relevant for the reliefs which are sought in this election petition. The petitioner repeatedly submitted that he was giving background and history of the election law and the manner in which the powerful Ministers and Chief Ministers have amassed money and have used their powers corruptly and contrary to the provisions of law. The petitioner says that Chief Minister viz. Pratap Singh Kairon of Punjab, Chief Minister Arjun Singh, Chief Minister Saklecha, Chief Minister Lalu Yadav, Prime Minister P.V. Narasimha Rao were the direct result of the political party who corruptly misused the State Machinery for gaining power and spending money above the excess ceiling limit. I am unable to understand as to how this statement contained in the petition would formulate a ground in favour of the petitioner. If those persons were not good, the same would not make the present election bad. The petitioner is required to show to the Court by giving proper particulars and details of the facts that the present election was adversely affected because of the abuse or misuse of the powers of the man in power or by the political parties. The petitioner in para-10 has further said that the elections in India are a game of one per cent rich persons and 99% people are not getting the benefit of the democracy and constitutional provision. This again may be good for a political speech but would not tantamount or partake a legal pleading in support of the election petition. The petitioner thereafter has said that in earlier elections there had been incidents of violence and assassination but he does not say that how the incidents of violence in the earlier elections have affected the present election. It appears that the petitioner had one single goal and one point programme in the present petition to say that a private individual/ candidate should be treated at par with the political party and should get all the benefits which a candidate of the political party is getting under the laws, rules and orders. Unfortunately, all these questions cannot be considered by this Court while trying the election petition.

19. The petitioner submits that he has challenged the validity of the provisions of the Representation of People Act, 1951, therefore the present matter should be referred to the Larger Bench. The request appears to be strange. In an election petition, the Court is required to try the election petition and decide as to whether the elections were good or not. An election Judge is not a Judge exercising its powers under Article 226 of the Constitution of India but he has to exercise his powers as an Election Judge within the frame work of the Representation of People Act. Such a request, cannot be made before the Election Judge that the matter be referred to a Larger Bench. If the petitioner feels that the provisions of law are ultra vires the Constitution then he again would be free to approach the proper forum which is provided to him under the law.

20. It was next contended that Section 158(4) of the Representation of People Act which relates to forfeiture of the deposit is ultra vires the Constitution. I fail to understand as to how the forfeiture clause would adversely affect the elections. When the law provides that the security deposited by a contesting candidate would stand forfeited if he does not secure a particular percentage of the vote then all concerned are bound by the law. It was then submitted that Form-2A under Rule-4 of the Conduct of Election Rules is ultra vires the Constitution. The argument can straightaway be rejected because the frame of the Form has not adversely affected the elections.

21. It was then contended that the Prime Minister of India Shri Atal Bihari Vajpeyi and Chief Minister of Madhya Pradesh Shri Digvijay Singh in their party speeches and political speeches assured the public at large of Chhattisgarh that if they were brought in power or they come in power then they would chalk-out a new State, therefore, this assurance given by the Prime Minister and the Chief Minister falls within the mischief of Section 123 of the Representation of People Act. A perusal of Section 123 would make it abundantly clear that the charges must be specific.

Where a political party makes its Magna-carta for the public then it proposes that after coming into power it would act in accordance with certain policy. The description of the policy as given in the charter of the party cannot be said to be a corrupt practice. It is not the case of the petitioner that by giving such assurance the elections were so badly affected that people who wanted to vote for the petitioner, could not vote for him. There are no details in the election petition as to how the people were adversely influenced or how they swayed away by such proposals made by the political parties.

22. The petitioner has further submitted that the policies declared and the promises made by the Prime Minister and the Chief Minister tantamount to corrupt practices under section 123(1) (A) and (B) (b) (2) (3) and (6) of Section 123 of R.P. Act. A perusal of Section 123 of the Act and its fair understanding in its true perspective would certainly show that the allegations made by the present petitioner do not come within the purview or mischief of corrupt practice.

23. The grounds raised as ground No D, E and F, in the opinion of this Court do not provide any foundation in support of the Election Petition to set aside the elections of 21 Durg Parliamentary Constituency. Ground-G relates to the limitation and jurisdiction of the High Court. Ground-H relates to deposit of the security.

24. These are the only 8 grounds in support of the Election Petition.

25. In the opinion of this Court, unless an election petition is supported by proper pleadings and raised triable issues which require adjudication by the Court, it would not be necessary for the Court to entertain such a petition.

26. The petitioner submitted that if he is given proper opportunity, he would file a petition under Article 32 of the Constitution of India before the Supreme Court and would challenge the validity of law. According to him, till the petitioner files the petition before the Supreme Court of India and secure an order of transfer of this election petition, the hearing of this election petition must be stayed. I am unable to concede to the request made by the petitioner. An election petition is governed by the law of the day. If the petitioner feels that he is entitled to file a petition under Article 32 of the Constitution of India and challenge the vires of the provision of law then disposal of this election petition is not going to cause any hindrance in his way.

27. After giving my thoughtful consideration to the pleadings raised in the election petition and the arguments of the petitioner, I am unable to find that the petition is properly constituted or raises proper pleadings or triable issues in support of the grounds which were argued or even raises proper grounds for challenging the correctness and propriety of the elections.

28. The petition is dismissed.

29. As the election petition is being dismissed the security deposit and the stamped envelopes submitted by the petitioner be returned back to him after the period of limitation for filing an appeal to the Supreme Court is over. In case an appeal is filed against this judgment then the disposal of the envelopes and the security shall be governed by the directions of the Supreme Court.

Sd/- R. S. GARG
Judge

16-3-2000

[No. 82/MP-HP/(42/99)/2000]

By Order,
L. H. FARUQI, Secy.

